

# CONSTANTINE CANNON LLP

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## **VIA ECF**

The Honorable Margo K. Brodie  
The Honorable Joseph A. Marutollo  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*,  
Nos. 05-md-1720 & 13-cv-5746 (MKB) (JAM)

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Dear Chief Judge Brodie:

Dear Chief Judge Brodie and Magistrate Judge Marutollo:

As the Court has now resolved all the pending summary judgment motions in the Direct Action Plaintiffs' cases, the 7-Eleven Plaintiffs<sup>1</sup> write to request a status conference, during which the Court and the parties can discuss establishing a schedule for remaining pretrial procedures and trial. Specifically, the 7-Eleven Plaintiffs would like to discuss the following issues at the conference:

1. ***Venue for trial.*** Given that the Court has gained deep expertise in these cases due to its exhaustive evaluation of *Daubert* and summary judgment motions, the 7-Eleven Plaintiffs

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<sup>1</sup> The Direct Action Plaintiffs in Case No. 13-cv-5746 (MKB)(JAM), known as the "7-Eleven Plaintiffs" are Alimentation Couche-Tard Inc. (Circle K), Ashley Furniture Industries Inc., Barnes & Noble College Booksellers, LLC, Beall's, Inc., Boscov's, Inc., Brookshire Grocery Company, The Buckle, Inc., Coborn's, Incorporated, Cracker Barrel Old Country Store, Inc., Cumberland Farms, Inc., D'Agostino Supermarkets, Inc., Dick's Sporting Goods, Inc., Dillard's, Inc., Drury Hotels Company, LLC, Crate & Barrel, CB2 and Hudson Grace, Family Dollar Stores, Inc., Family Express Corporation, Fleet Farm and affiliates, Foot Locker, Inc., The Gap, Inc., Genesco Inc., HMSHost Corporation, IKEA North America Services, LLC, Jetco Cash & Carry Enterprises, LLC, Marathon Petroleum Company LP, Andeavor LLC, National Association of Convenience Stores, National Grocers Association, National Railroad Passenger Corporation (Amtrak), NIKE, Inc., P.C. Richard & Son, Inc., Panda Restaurant Group, Inc., Panera Bread Company, Booking Holdings Inc., priceline.com, LLC, Ralph Lauren Corporation, Recreational Equipment, Inc. (REI), Republic Services, Inc., Restoration Hardware, Inc. (RH), Starbucks Corporation, Swarovski U.S. Holding Limited, The Talbots, Inc., Thermo Fisher Scientific Inc., Thorntons LLC, and Yum! Brands, Inc.

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believe that this Court should preside over the trial in these cases. We would like to discuss the Court's views on this topic.

2. ***Trial Date.*** The 7-Eleven Plaintiffs would like to discuss when the Court would be available for trial.

3. ***Remaining Pretrial Schedule.*** It is now necessary to enter a final pretrial scheduling order to ensure that all required pretrial tasks are efficiently completed and that trial can be scheduled promptly. Such a schedule should be set regardless of where the 7-Eleven Plaintiffs' case is ultimately tried. We have attempted to discuss scheduling issues with the Defendants but have not made much progress. That is because Defendants have emphasized that they are "not prepared to agree to dates for submissions concerning trial exhibits, witness lists, voir dire, jury instructions, and verdict forms until we have clarity on the forum, parties involved, and relief sought, including resolution of the dispute over the DAPs' position that they're entitled to seek injunctive relief." Accordingly, guidance from the Court is necessary so that a final pretrial schedule can be established.

The 7-Eleven Plaintiffs submit that it would be helpful to the Court if the parties set out their respective positions on these matters (including the procedural vehicle available for the Court to retain these cases for trial) in a status report. We propose that such a report be filed jointly, three days in advance of whatever date the Court establishes for the conference.

We thank the Court for its continued attention to this matter.

Respectfully submitted,

/s/ Jeffrey Shinder

Jeffrey Shinder